

Chapter 2

USDA Activities

The Dairy Programs unit of USDA's Agricultural Marketing Service (AMS) has day-to-day oversight responsibilities for the Dairy Board and the Fluid Milk Board. Dairy Programs oversight activities include reviewing and approving the Dairy and Fluid Milk Board's budgets, budget amendments, contracts, advertising campaigns, and investment plans. Approval of program materials is also a responsibility of Dairy Programs. Program materials are monitored for conformance with provisions of respective Acts and Orders and with other legislation such as the Nutrition Labeling and Education Act.

Dairy Programs continues to ensure that the collection, accounting, auditing, and expenditure of generic promotion funds is consistent with the enabling legislation and orders; to qualify State or regional dairy product promotion, research, or nutrition education programs (Qualified Programs); and to provide for evaluation of the effectiveness of both programs' advertising campaigns. USDA also assists the Boards in their assessment collection, compliance, and enforcement actions. Other USDA responsibilities relate to nominating and appointing Board members, amending the orders, conducting referenda, and conducting periodic program audits. USDA representatives attend full Board and Board committee meetings.

National Dairy Promotion and Research Board Oversight

Nominations and Appointments

The 36 members of the Dairy Board who administer the program serve 3-year terms, with no member serving more than two consecutive terms. Dairy Board members are selected by the Secretary of Agriculture from nominations submitted by producer organizations, general farm organizations representing other producers, Qualified Programs, or other interested parties.

Twenty-nine nominations were received by USDA for the 12 Dairy Board members whose terms expired October 31, 2003. A press release issued on September 30, 2003, announced the appointment of seven new members and five incumbents. All will serve 3-year terms ending October 31, 2006. Newly appointed members were: Elizabeth I. Anderson, Onalaska, Washington (Region 1); Mary E. Cameron, Hanford, California (Region 2); Kimberly K. Clauss, Hilmar, California (Region 2); William C. Stouder, Wendell, Idaho (Region 3); Ronald G. Johnsrud, Gays Mills, Wisconsin (Region 6); James R. Bartelson, Anita, Iowa (Region 7); and Donald E. Gurtner, Fremont, Indiana (Region 9). Reappointed to serve second terms were: Charles W. Bryant, Austin, Arkansas (Region 4); Arlon E. Fritsche, New Ulm, Minnesota (Region 5); Connie M. Seefeldt, Coleman, Wisconsin (Region 6); Lewis Gardner, Galeton, Pennsylvania (Region 11); and Edgar A. King, Schuylerville, New York (Region 12).

Lists of current and former Dairy Board members appear in Appendix A. Appendix C-1 is a map of the contiguous 48 States depicting the 13 geographic regions under the Dairy Promotion and Research Order (Dairy Order).

Foreign Agricultural Service

The Secretary of Agriculture has delegated oversight responsibility for all foreign market development activities outside the United States to the Foreign Agricultural Service (FAS) (7 CFR 2.43(a)(24)). FAS reviews the USDEC foreign market development plan and related export contracts. USDEC export contracts also are reviewed by AMS Dairy Programs to ensure conformance with the Dairy Production Stabilization Act of 1983 (Dairy Act) and Dairy Order and with established USDA policies. In 2003, the USDA's Foreign Market Access Program and the Market Promotion Program provided matching funds to USDEC for dairy product promotion and market research in Japan, Mexico, Southeast Asia, South Korea, and Latin America.

Contracts

The Dairy Act and Dairy Order require that all contracts expending assessment funds be approved by the Secretary (7 CFR 1150.140). During 2003, Dairy Programs reviewed and approved 250 Dairy Board and DMI agreements, amendments, and annual plans. Funding approvals were from the 1999, 2000, 2001, 2002, and 2003 fiscal periods. Appendix F-1 lists the contractors and corresponding Board initiatives approved by USDA during 2003.

Contractor Audits

During 2003, DMI retained the certified public accounting firm of KPMG LLP to audit the records of the following contractors: Campbell Mithun (media and advertising); Edelman Public Relations Worldwide (public relations); Information Resources, Inc. (marketing research services); IntNet (export, through USDEC); and Olson Communications (media and advertising). DMI is implementing the audit recommendations for improving management and internal controls over contracts.

Collections

The Dairy Act specifies that persons who pay producers and producers marketing milk directly to consumers, commonly referred to as "responsible persons," shall remit assessments to the Dairy Board or to Qualified Programs for milk produced in the United States and marketed for commercial use.

The Dairy Act provides that dairy farmers can direct up to 10 cents of their 15-cent per hundredweight assessment to Qualified Programs. During 2003, the Dairy Board received about 5.11 cents of the 15-cent assessment.

Compliance

Compliance by responsible persons in filing reports and remitting assessments continues in a timely manner and at a high rate. No significant differences were discovered when comparing the audit results to what was reported by the responsible persons. The Dairy Board also verifies

that the credits claimed by responsible persons are actually sent to Qualified Programs. This verification is done by contract with each Qualified Program.

When noncompliance exists, the Dairy Board takes initial action on the matter. If the Dairy Board is unsuccessful in resolving the violation, the matter is referred to USDA for further action. In 2003, USDA assisted the Dairy Board in the resolution of several bankruptcies and in other collection activities related to delinquent assessments.

Qualified Programs

Dairy Programs reviewed applications for continued qualification from 59 Qualified Programs. A list of the 59 active Qualified Programs is provided in Appendix H. In line with its responsibility for monitoring the Qualified Programs, Dairy Programs obtained and reviewed income and expenditure data from each of the programs. The data reported from the Qualified Programs are included in aggregate form for 2002 and 2003 in Chapter 1.

Order Amendments

USDA announced amendments to the Dairy Order on September 2, 2003. Under the amendments, which were proposed by the Dairy Board, member representation in 4 of the 13 geographic regions of the Dairy Board was modified to better reflect current milk production in the specified regions. The implemented changes provided for more accurate representation on the board.

The Dairy Order requires that regional representation be reviewed periodically and changed when necessary to best reflect milk production volume within regions. Based on the Dairy Board's review of 2002 milk production data, Region 1 (Oregon and Washington) and Region 2 (California) each gained one board member, while Region 5 (Minnesota, North Dakota, and South Dakota) and Region 10 (Florida, Georgia, North Carolina, South Carolina, and Virginia) each lost one board member. The amendments were effective September 4, 2003.

Litigation

The Dairy Board and the Secretary of Agriculture were named as defendants in a lawsuit in the U.S. District Court for the Middle District of Pennsylvania by dairy producers seeking a declaration that the Dairy Act violates their First Amendment rights of free speech and association. In March 2003, a Federal trial court in Pennsylvania found that the Dairy Program does not violate the claimants' right of free speech and association. Upon appeal, a three-judge panel of the U.S. Court of Appeals for the Third Circuit reversed this decision. The panel found that the Dairy Program does violate the claimants' right of free speech and association rights by compelling them to subsidize speech with which they disagree. The Department of Justice (on behalf of the Secretary of Agriculture and Dairy Board) filed a petition for an *En Banc* rehearing, but the petition was subsequently denied. The Third Circuit has granted a stay of the decision.

National Fluid Milk Processor Promotion Board Oversight

Nominations and Appointments

The 20 members of the Fluid Milk Board serve 3-year terms, with no member serving more than two consecutive terms. The Fluid Milk Promotion Order (Fluid Order) also provides that no company shall be represented on the board by more than three representatives. Fluid Milk Board members who fill vacancies with a term of 18 months or less are permitted to serve two additional 3-year terms. Fluid Milk Board members are selected by the Secretary from nominations submitted by fluid milk processors, interested parties, and eligible organizations. In a news release issued on April 14, 2004, the Secretary of Agriculture announced three reappointments and five new appointments to the Fluid Milk Board. Reappointed to serve a second term were Rachel A. Kylo, Minneapolis, Minnesota (Region 7); John D. Robinson, Dallas, Texas (Region 12); and James T. Wilcox III, Roy, Washington (Region 13). Newly appointed to serve their first terms were Michael F. Touhey, Jr., Franklin, Massachusetts (Region 1); R. Bruce Matson, Newport News, Virginia (Region 4); Robert M. McCullough, San Antonio, Texas (Region 10); Randy D. Mooney, Kansas City, Missouri (At-Large Processor); and Patricia C. Romero, Irvine, California (At-Large Public). The reappointed and newly appointed members were seated at the July 15–17, 2004, Fluid Milk Board Meeting. The terms for all appointees except Region 12 will expire on June 30, 2007. The term for Region 12 will expire June 30, 2006.

Four vacancies occurred on the Fluid Milk Board due to resignations. The positions were vacated by Peter M. Ross, Franklin, Massachusetts (Region 1); Lawrence V. Jackson, Pleasanton, California (Region 12); Ronald M. Foster, Modesto, California (Region 14); and Richard Walrack, City of Industry, California (Region 15). The vacancies were filled by Michael F. Touhey, Jr., Franklin, Massachusetts; John D. Robinson, Dallas, Texas; Jerry N. Tidwell, Walnut Creek, California; and Paul W. Bikowitz, City of Industry, California, respectively.

A list of current and past Fluid Milk Board members appears in Appendix B. Appendix C-2 shows a map depicting the 15 geographic regions under the Fluid Milk Order.

Program Development

The Fluid Milk Board contracted with the International Dairy Foods Association (IDFA) to manage the program. IDFA contracted with Lowe Worldwide, Siboney Inc., Weber Shandwick, Inc., and Flair Communications, Inc., to develop the Fluid Milk Board's teen and mom advertising, Hispanic advertising and public relations, consumer education/public relations, and promotion programs, respectively. Additionally, IDFA contracted with Draft Worldwide in late 2003 for promotion activities.

Contractor Audits

The Fluid Milk Board retained the certified public accounting firm of Synder, Cohn, Collyer, Hamilton & Associates P.C. to audit the records of Flair Communications, Inc., in order to

determine if the agency had conformed to the financial compliance requirement specified in its agreement with the Board for the period of January 1, 2002, through December 31, 2002. A final audit report had not been issued at the time of printing this report. The Board continues to enhance its internal contract control system in order to ensure that the amounts invoiced to the Board are in compliance with established contracts and procedures.

Compliance

Compliance by fluid milk processors in filing reports and remitting assessments continues in a timely manner and at a high rate. During this fiscal period, no new cases of delinquent accounts have been referred to USDA.